

FACT SHEET

United States Environmental Protection Agency
Region 10
1200 Sixth Avenue, OW-130
Seattle, Washington 98101

(206) 553-1214

Permit No.: AKG-37-0000

PROPOSED SECOND MODIFICATION OF THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) GENERAL PERMIT (GP) TO DISCHARGE POLLUTANTS PURSUANT TO THE PROVISIONS OF THE CLEAN WATER ACT (CWA) FOR ALASKAN MECHANICAL PLACER MINERS.

This fact sheet includes (a) the tentative determination of the Environmental Protection Agency (EPA) to modify the GP, (b) information on public comment, public hearings and appeal, (c) the conditions and requirements contained in the modification.

Persons wishing to comment on the modifications contained in the proposed GP may do so before the expiration date of the Public Notice. Only the modifications are open to public comment. All written comments should be submitted to EPA as described in the Public Comments Section of the attached Public Notice.

After the expiration date of the Public Notice, the Director, Office of Water, will make final determinations with respect to issuance of the modified GP. The tentative determinations contained in the proposed GP will become final conditions if no substantive comments are received during the public comment period.

A General Permit follows rulemaking procedures so EPA's issuance and promulgation activities must be conducted in accordance with the Administrative Procedure Act (APA). The modified GP will become effective 30 days after publication of the final modified GP in the Federal Register according to Section 553(d) of the APA. Anyone wishing to appeal the modifications to this GP must do so in court according to 40 CFR §124.71. Interested persons may challenge the amendments, within 120 days of issuance, in the Circuit Court of Appeals of the United States under Section 509(b)(1) of the Act.

The proposed NPDES permit and fact sheet are on file and may be inspected and copies made at the above address any time between 8:30 a.m. and 4:00 p.m., Monday through Friday. Copies and other information may be requested by writing to EPA at the above address to the attention of the NPDES Permits Unit, or by calling (206) 553-1214. The proposed GP and fact sheet are also available from the EPA Alaska Operations Office, Room 537, Federal Building, 222 West 7th Avenue, Anchorage, Alaska 99513-7588 or Alaska Operations Office, 410 Willoughby Avenue, Suite 100, Juneau, Alaska 99801 or the Alaska Department of Environmental Conservation (ADEC), Watershed Management Section, 610 University Avenue, Fairbanks, Alaska 99709.

TECHNICAL INFORMATION

1. SUMMARY OF MODIFICATIONS

The intent of this proposed modification of the GP is to revise the effluent limitation for arsenic based on a change to the state's Water Quality Standards. This has been requested by a Permittee according to the requirements of 40 CFR § 124.5 for the reasons specified in 40 CFR § 122.62. Also, some additions and deletions of permit language have been made due to the water quality standard change, changes in regulation and the correction of typographical errors. Renumbering of Permit Parts, where necessary, has been done without being noted.

2. COVERAGE OF MODIFIED PERMIT

It is the intent of EPA to apply the final modified general permit to all facilities previously covered by a general permit for mechanical operations without the submission of a new Notice of Intent (NOI). Upon issuance of the final GP, a copy of the new permit will be sent to each permittee.

3. DESCRIPTION OF THE INDUSTRY

Placer mining involves the mining and extraction of gold or other heavy metals and minerals primarily from alluvial deposits. These deposits may be in existing stream beds or ancient often buried stream deposits, i.e. paleo or fossil placers. Many Alaskan placer deposits consist of unconsolidated clay, sand, gravel, cobble and boulders that contain very small amounts of native gold or other precious metals. Most are stream deposits and occur along present stream valleys or on benches or terraces above existing streams. Beach placer deposits have been and continue to be important producers in Alaska. These deposits, most notable near Nome, include both submerged and elevated beach placer deposits.

4. RECEIVING WATERS

The receiving waters for the discharges are waters of the United States including tundra wetlands which are classified in 18 AAC 70 as Classes (1)(A), (B), and (C) for use in drinking, culinary, and food processing, agriculture, aquaculture, and industrial water supply; contact and secondary recreation; and growth and propagation of fish, shellfish, other aquatic life and wildlife. Since most of these waterbodies are protected for all uses, the most restrictive water quality standards will be applied in this modified GP.

5. REGULATORY AUTHORITY

a. State of Alaska Water Quality Standards and Limitations

Section 301(b)(1) of the Act requires the establishment of limitations in permits necessary to meet water quality standards by July 1, 1977. All discharges to state waters must comply with state and local coastal management plans as well as with state water quality standards, including the state's antidegradation policy. Discharges to state waters must also

comply with limitations imposed by the state as part of its coastal management program consistency determinations, and of its certification of NPDES permits under section 401 of the Act.

The NPDES regulations at 40 CFR 122.44(d)(1) require that permits include water quality-based limits which "Achieve water quality standards established under section 303 of the CWA, including State narrative criteria for water quality."

b. Section 308 of the Clean Water Act

Under Section 308 of the Act and 40 CFR § 122.44(i), the Director must require a discharger to conduct monitoring to determine compliance with effluent limitations and to assist in the development of effluent limitations.

6. SPECIFIC PERMIT CONDITIONS

EPA has concluded, based on available sampling data, that arsenic is commonly associated with placer mining wastes. Locally, it is the most abundant toxic metal present. It is for this reason that EPA has determined that arsenic is a pollutant of concern.

This modification of the existing Modified General Permit AKG-37-0000 for Alaskan Mechanical Placer Miners (GP) is based on the "Withdrawal from Federal Regulations of the Applicability to Alaska's Waters of Human Health Criteria" which was published in the Federal Register on March 2, 1998 [63 FR 10140] and became effective on April 1, 1998. This rulemaking withdraws the human health criteria for arsenic. This makes the drinking water maximum contaminant level (MCL) of 50 µg/L the applicable standard protective of the designated uses of the receiving waters covered by the GP.

The effluent limitation proposed for arsenic is a daily maximum limit of 50 µg/L. This is based on the Primary Drinking Water MCL applicable through 18 AAC 70.020(1)(A) for Toxic and other Deleterious Organic and Inorganic Substances. EPA defines the MCL as the "*maximum permissible level of a contaminant*" (40 CFR 142.2) so it is included as an instantaneous maximum limit.

7. REMOVALS, CHANGES AND ADDITIONS

a. Removal of Language

In the previous permit, Permit Part II.B.4. contained language discussing the application of the minimum level (ML) because the effluent limitation was below the method detection level (MDL). Since the proposed effluent limitation of 50 µg/L is above the MDL and the ML, there is no need for the permit to contain this language.

b. Additions

The Commissioner of ADEC, Michele Brown, sent a letter to Robert Perciasepe, Assistant Administrator for EPA's Office of Water, dated October 8, 1997, concerning the State's regulations on using "site specific data to develop appropriate permit limits or site specific criteria to further our statutory mission, which includes protection of public health." Permit Part II.A.1.e. contains new language to address site specific criteria that could be developed that are more stringent than the proposed effluent limitation if concerns are raised to the State by an affected community or individual. EPA is working with the State to generate a mechanism by which a site specific criterion would be developed and implemented.

c. Changes

Permit Part V.B. lists the administrative and civil penalties for a violation of the permit as \$10,000 and \$25,000, respectively. Changes to \$11,000 and \$27,500 were noticed in the Federal Register [61 FR 69360, December 31, 1996]. To avoid the possibility of different levels being listed in different places, this section has been updated to include generic penalty language.

Permit Part IV.B. has been changed from the Enforcement Unit at mailstop WD-135 to the NPDES Compliance Unit at mailstop OW-133.

Permit Part I.F.4. has been updated from a mailstop of WD-134 to OW-130.

Permit Part I.F.6. contained a typographical error listing Wrangell St. Alias instead of Wrangell St. Elias. This has been corrected.

8. OTHER LEGAL REQUIREMENTS

a. Oil Spill Requirements

Section 311 of the Act prohibits the discharge of oil and hazardous materials in harmful quantities. Routine discharges specifically controlled by a permit are excluded from the provisions of Section 311. However, this general permit does not preclude the institution of legal action or relieve permittees from any responsibilities, or penalties for other, unauthorized discharges of oil and hazardous materials which are covered by Section 311 of the Act.

b. Coastal Zone Management Act

A determination that the activities allowed by this proposed GP are consistent with the Alaska Coastal Management Plan must be made in accordance with the Coastal Zone Management Act before a final permit will be issued.

c. State Water Quality Standards and State Certification

Whereas state waters are involved in this proposed GP, the provisions of Section 401 of the Act will apply. Furthermore, in accordance with 40 CFR § 124.01(c)(1), public notice of the proposed GP has been provided to the State of Alaska and Alaska state agencies having jurisdiction over fish, shellfish, and wildlife resources, and over coastal zone management plans.

d. Endangered Species Act

Letters were sent to the U.S. Fish and Wildlife Service (USFW) and to the National Marine Fisheries Service (NMFS) on April 20, 1998, requesting information to the extent the permit modification may affect threatened and endangered species.

REFERENCES

Letter from John Cook to Robert R. Robichaud dated March 25, 1998, requesting that EPA modify the General Permit.

Letter from Steve Borell, Executive Director of the Alaska Miners Association, Inc., to Robert R. Robichaud dated March 24, 1998, requesting that EPA modify the General Permit.

63 FR 10142, March 2, 1998. Withdrawal from Federal Regulations of the Applicability to Alaska's Waters of Human Health Criteria

Letter from Michele Brown to Robert Perciasepe dated October 8, 1997.

61 FR 69360, December 31, 1996. Civil Monetary Penalty Inflation Adjustment Rule.